

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Scott Johnson,

Plaintiff,

v.

Paar Hospitality Inc, a California
Corporation; and Does 1-10,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Scott Johnson complains of Paar Hospitality Inc, a California Corporation; and Does 1-10 ("Defendants"), and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. Plaintiff is a level C-5 quadriplegic. He cannot walk and also has significant manual dexterity impairments. He uses a wheelchair for mobility and has a specially equipped van.

2. Defendant Paar Hospitality Inc owned the real property located at or about 500 W. A Street, Hayward, California, in October 2017.

3. Defendant Paar Hospitality Inc owned the real property located at or

1 about 500 W. A Street, Hayward, California, in October 2018.

2 4. Defendant Paar Hospitality Inc owned the real property located at or
3 about 500 W. A Street, Hayward, California, in January 2019.

4 5. Defendant Paar Hospitality Inc owned the real property located at or
5 about 500 W. A Street, Hayward, California, in March 2019.

6 6. Defendant Paar Hospitality Inc owns the real property located at or
7 about 500 W. A Street, Hayward, California, currently.

8 7. Defendant Paar Hospitality Inc owned Vagabond Inn located at or
9 about 500 W. A Street, Hayward, California, in October 2017.

10 8. Defendant Paar Hospitality Inc owned Vagabond Inn located at or
11 about 500 W. A Street, Hayward, California, in October 2018.

12 9. Defendant Paar Hospitality Inc owned Vagabond Inn located at or
13 about 500 W. A Street, Hayward, California, in January 2019.

14 10. Defendant Paar Hospitality Inc owned Vagabond Inn located at or
15 about 500 W. A Street, Hayward, California, in March 2019.

16 11. Defendant Paar Hospitality Inc owns Vagabond Inn (“Motel”) located
17 at or about 500 W. A Street, Hayward, California, currently.

18 12. Plaintiff does not know the true names of Defendants, their business
19 capacities, their ownership connection to the property and business, or their
20 relative responsibilities in causing the access violations herein complained of,
21 and alleges a joint venture and common enterprise by all such Defendants.
22 Plaintiff is informed and believes that each of the Defendants herein,
23 including Does 1 through 10, inclusive, is responsible in some capacity for the
24 events herein alleged, or is a necessary party for obtaining appropriate relief.
25 Plaintiff will seek leave to amend when the true names, capacities,
26 connections, and responsibilities of the Defendants and Does 1 through 10,
27 inclusive, are ascertained.

28

JURISDICTION & VENUE:

13. The Court has subject matter jurisdiction over the action pursuant to 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

14. Pursuant to supplemental jurisdiction, an attendant and related cause of action, arising from the same nucleus of operative facts and arising out of the same transactions, is also brought under California's Unruh Civil Rights Act, which act expressly incorporates the Americans with Disabilities Act.

15. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is founded on the fact that the real property which is the subject of this action is located in this district and that Plaintiff's cause of action arose in this district.

FACTUAL ALLEGATIONS:

16. Plaintiff went to the Motel in October 2017, October 2018, January 2019 and March 2019 with the intention to avail himself of its accommodation, motivated in part to determine if the defendants comply with the disability access laws.

17. The Motel is a facility open to the public, a place of public accommodation, and a business establishment.

18. Guestrooms are one of the facilities, privileges, and advantages offered by Defendants to patrons of the Motel.

19. Unfortunately, on the dates of the plaintiff's visits, the defendants failed to provide accessible guestrooms.

20. Currently, the defendants fail to provide accessible guestrooms.

21. Entrance into the Motel is another one of the facilities, privileges, and advantages offered by Defendants to patrons of the Motel.

22. Unfortunately, on the dates of the plaintiff's visits, the defendants failed to provide accessible door hardware.

1 23. Currently, the defendants fail to provide accessible entrance hardware.

2 24. Plaintiff personally encountered these barriers.

3 25. By failing to provide accessible facilities, the defendants denied the
4 plaintiff full and equal access.

5 26. The failure to provide accessible facilities created difficulty and
6 discomfort for the Plaintiff.

7 27. The defendants have failed to maintain in working and useable
8 conditions those features required to provide ready access to persons with
9 disabilities.

10 28. The barriers identified above are easily removed without much
11 difficulty or expense. They are the types of barriers identified by the
12 Department of Justice as presumably readily achievable to remove and, in fact,
13 these barriers are readily achievable to remove. Moreover, there are numerous
14 alternative accommodations that could be made to provide a greater level of
15 access if complete removal were not achievable.

16 29. Plaintiff will return to the Motel to avail himself of its accommodation
17 and to determine compliance with the disability access laws once it is
18 represented to him that the Motel and its facilities are accessible. Plaintiff is
19 currently deterred from doing so because of his knowledge of the existing
20 barriers and his uncertainty about the existence of yet other barriers on the
21 site. If the barriers are not removed, the plaintiff will face unlawful and
22 discriminatory barriers again.

23 30. Given the obvious and blatant nature of the barriers and violations
24 alleged herein, the plaintiff alleges, on information and belief, that there are
25 other violations and barriers on the site that relate to his disability. Plaintiff will
26 amend the complaint, to provide proper notice regarding the scope of this
27 lawsuit, once he conducts a site inspection. However, please be on notice that
28 the plaintiff seeks to have all barriers related to his disability remedied. See

Doran v. 7-11, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff encounters one barrier at a site, he can sue to have all barriers that relate to his disability removed regardless of whether he personally encountered them).

I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990 (On behalf of Plaintiff and against all Defendants.) (42 U.S.C. section 12101, et seq.)

31. Plaintiff re-pleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint.

32. Under the ADA, it is an act of discrimination to fail to ensure that the privileges, advantages, accommodations, facilities, goods and services of any place of public accommodation is offered on a full and equal basis by anyone who owns, leases, or operates a place of public accommodation. See 42 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows:

- a. A failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the accommodation would work a fundamental alteration of those services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- b. A failure to remove architectural barriers where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are defined by reference to the ADA Standards.
- c. A failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs or to ensure that, to the

1 maximum extent feasible, the path of travel to the altered area and
 2 the bathrooms, telephones, and drinking fountains serving the
 3 altered area, are readily accessible to and usable by individuals
 4 with disabilities. 42 U.S.C. § 12183(a)(2).

5 33. When a business provides facilities such as a guestroom, it must provide
 6 an accessible guestrooms.

7 34. Here, the failure to provide accessible guestrooms is a violation of the
 8 law.

9 35. When a business provides an entrance, it must provide an accessible
 10 entrance.

11 36. Here, the failure to provide accessible entrances is a violation of the law.

12 37. The Safe Harbor provisions of the 2010 Standards are not applicable
 13 here because the conditions challenged in this lawsuit do not comply with the
 14 1991 Standards.

15 38. A public accommodation must maintain in operable working condition
 16 those features of its facilities and equipment that are required to be readily
 17 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

18 39. Here, the failure to ensure that the accessible facilities were available
 19 and ready to be used by the plaintiff is a violation of the law.

20
 21 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
 22 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
 23 Code § 51-53.)

24 40. Plaintiff repleads and incorporates by reference, as if fully set forth
 25 again herein, the allegations contained in all prior paragraphs of this
 26 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
 27 that persons with disabilities are entitled to full and equal accommodations,
 28 advantages, facilities, privileges, or services in all business establishment of

1 every kind whatsoever within the jurisdiction of the State of California. Cal.
2 Civ. Code § 51(b).

3 41. The Unruh Act provides that a violation of the ADA is a violation of the
4 Unruh Act. Cal. Civ. Code, § 51(f).

5 42. Defendants' acts and omissions, as herein alleged, have violated the
6 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff's
7 rights to full and equal use of the accommodations, advantages, facilities,
8 privileges, or services offered.

9 43. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
10 discomfort or embarrassment for the plaintiff, the defendants are also each
11 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
12 (c).)

13 44. Although the plaintiff was markedly frustrated by facing discriminatory
14 barriers, even manifesting itself with minor and fleeting physical symptoms,
15 the plaintiff does not value this very modest physical personal injury greater
16 than the amount of the statutory damages.

17
18 **PRAYER:**

19 Wherefore, Plaintiff prays that this Court award damages and provide
20 relief as follows:

21 1. For injunctive relief, compelling Defendants to comply with the
22 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
23 plaintiff is not invoking section 55 of the California Civil Code and is not
24 seeking injunctive relief under the Disabled Persons Act at all.

25 2. Damages under the Unruh Civil Rights Act, which provides for actual
26 damages and a statutory minimum of \$4,000 for each offense.

1 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
2 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

3
4 Dated: June 15, 2019

CENTER FOR DISABILITY ACCESS

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6 By:



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8 Amanda Seabock, Esq.
Attorney for plaintiff